U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION UI
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DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 29-83 CHANGE 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
for Regional Management

SUBJECT : The "Uniform Method" Requirement for Measuring the "Experience" of Employers

1. Purpose. To inform the State agencies of the Federal law requirement that the "experience" of all employers be measured over the same period of time by uniform methods applicable to all employers and to all measures of experience under an approved State experience rating system.

2. References. Section 3303(a)(1) of the Federal Unemployment Tax Act (FUTA); Employment Security Memorandum (ESM) No. 9, issued in July 1940; UIPL 24-77, dated April 5, 1977; and UIPL 29-83, dated June 23, 1983.

3. Background. UIPL 29-83 transmitted to the States a statement of the principles of experience rating that the Department has derived from its interpretation of the experience rating requirements in Section 3303(a)(1) of the FUTA. One of the principles stated in UIPL 29-83 was the "uniform method" requirement that the experience of all employers be measured over the same period of time using the same factor or combination of factors. This Change 1 advises States of the derivation of this principle and its application in several specific cases.

The applicable section of Federal law is Section 3303(a)(1), FUTA, which provides, as a condition of employers in a State receiving the additional credit against the Federal unemployment tax that:

> (a) State Standards.--A taxpayer shall be allowed an additional credit under Section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law--

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> (1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date.

The words "his . . . experience" compel a State experience rating system to measure each individual employer's experience. The Department and its predecessor agencies have long held that a uniform method of measuring experience is essential in order to assure that a State's experience rating system measures the experience of each employer relative to the experience of all other employers subject to the State's system, so that each employer's contribution rate may be said to be based upon "his . . . experience." If this "uniform method" were not required, Section 3303(a)(1) would have no practical effect as a State could tailor different experience rating requirements for different groups of employers or even single employers.

The known purposes of experience rating include "the promotion of stability of employment and/or a fair allocation of the costs of unemployment compensation." (See ESM No. 9 at 1.) If not for the "uniform method" requirement, these purposes could be circumvented as different requirements applied to different employers would result in an unfair allocation of costs with no resulting stabilization of employment. Even if these purposes were perceived as having minimal relationship to principles of experience rating, there is nevertheless the explicit requirement of Section 3303(a)(1), FUTA, that each employer's reduced rate shall be based upon "his . . . experience."

The "uniform method" requirement was first enunciated by the Social Security Board, which was originally charged with assuring that the experience rating requirements of Section 3303(a) were met by the States. In an August 5, 1941 meeting, the Board determined that Section 3303(a)(1) (then Section 1602(a))--

> requires that a State law conforming therewith must rate all employers entitled to reduced rates on the basis of their experience during the same specified period with the same single factor (or a combination of factors which taken together constitute a single factor) bearing a direct relation to unemployment risk . . . .

UIPL 29-83 restated and elaborated on the Board's position:

> The experience of all employers subject to contributions under a State law must be measured by the same factor throughout the same period of time. If there is to be an adjustment to the method of measuring experience or in the computation of rates, the adjustment should apply uniformly; otherwise, there would be a distortion of relative experience.

This general rule is applicable to all employers and to all measures of experience under an approved State experience rating system. It was the subject of a 1976 conformity proceeding involving the State of Oregon. Oregon law singled out a certain group of employers to be relieved of charges for benefits paid. (Oregon used benefits paid as its factor for measuring experience.) In his decision, the Secretary stated that:

> The special noncharging provision for food processors under Oregon law . . . is violative of section 3303(a)(1) of the Federal Unemployment Tax Act.
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> a. The general principle underlying the Department's interpretations of section 3303(a)(1) has been that a State must charge all employers by the same rule over the same period of time.

Therefore, a "uniform method" is required to be used in the measurement of all elements of the "experience" of employers under a State's experience rating system. Only in this manner can there be assurance that each employer's calculated rate is based upon "his . . . experience." See UIPL 24-77 which transmitted the Secretary's decision.

4. Application. A conflict with the "uniform method" requirement of Section 3303(a)(1), FUTA, would occur if certain employers received differing treatment due to an adjustment to any of the elements in the State's experience rating formula. The uniform method requirement applies to, among others, the following situations:

a. As established in the Oregon conformity case, States which require employers to be charged in certain situations, may not relieve some employers of benefit (or benefit-wage) charges, or make other adjustments to actual charges.

b. States which require contributions paid to be used in computing a reserve ratio, may not permit some employers to receive credit for contributions due, but not paid, or make other adjustments not related to the actual amounts paid into the State unemployment fund. (It should be noted that employers may receive the credit available under Section 3302(a), FUTA, only for amounts actually paid into a State unemployment fund. See the Internal Revenue Service regulations at 26 CFR Sections 31.3302(a)-1 and (a)-3. The Secretary of Labor's annual certification under Section 3304(c), FUTA, pertains to the credit permitted under Section 3302(a) "only for the amount of contributions paid" into a State unemployment fund.)

c. States may not permit the use of an adjusted payroll for selected employers when the State formula requires the use of actual payroll. This requirement applies whether payroll is a part of the "factor" used in measuring experience, or when payroll is used only as an "exposure" factor in calculating contribution rates. (See the attachment to UIPL 29-83 at 9 for a discussion of this "exposure" factor.)

5. Action Required. State administrators are requested to take necessary action to assure that the State law is applied consistently with Section 3303(a)(1), FUTA, as interpreted in UIPL 29-83 and this Change 1.

6. Inquiries. Please direct inquiries to the appropriate Regional Office.